APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,310	10/04/2001	Gary Thomas Axberg	SJO920010108US1	4106

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EXAMINER
CHOUDHURY, AZIZUL Q

ART UNIT	PAPER NUMBER
2145	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>12 September 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-29</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
<u>The arguments are not deemed fully persuasive.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☒ Other: <u>See Continuation Sheet</u>.

JASON CARDONE   AC
SUPERVISORY PATENT EXAMINER

Continuation of 13. Other: The arguments presented within the after-final amendment is not deemed fully persuasive. The first argument focuses on the claim limitations of claim 1. The applicant contends that the claim limitations are not taught by the prior arts presented by the examiner. The examiner disagrees with this assertion. The first prior art, Crockett, teaches a design allowing for data shadowing to provide for data recovery. The design features two hosts (Figure 4, elements 401 and 411, Crockett). The two hosts are updated against one another so that both feature full recovery capabilities (column 2, lines 58-62, Crockett). Plus, means for detection of errors (events) are present and are capable of triggering synchronization between the primary and secondary hosts (column 7, lines 34-44, Crockett). However, Crocket does not explicitly teach the storage of network topology information nor does Crocket teach the disregarding of events. In the same field of endeavor, Callon also teaches a network recovery design. In Callon's disclosure, it is taught that network recovery designs use network topology databases and store network topology (column 7, lines 37-39, Callon). Also in the same field of endeavor, Dias teaches how events are filtered to ensure that needless events are not acted on (column 2, lines 28-33, Dias). Therefore, it would have been obvious to one skilled in the art, during the time of the invention, to have combined the teachings of Crocket with those of Callon and Dias, for facilitating recovery from communication link failures in a digital data network (column 1, lines 10-11, Callon). As for the point of contention over claim 2, the examiner disagrees with the applicant's contention. The applicant contends that the prior arts do not teach the trait of agents generating a scan identifying attributes of the host, storage units, or relationships therebetween. The examiner disagrees because first, the examiner stated that agents/daemons are inherent in within Crockett's design. Second, the examiner explained that Crockett teaches a design allowing for data shadowing to provide for data recovery. The design features two hosts (Figure 4, elements 401 and 411, Crockett). The two hosts are updated against one another so that both feature full recovery capabilities (column 2, lines 58-62, Crockett). With all these actions occurring, it is inherent that the agents would scan the claimed attributes. If agents/daemons didn't scan the devices or their relationships in a recovery design (such as Crockett's) as alleged by the applicant, it is unknown how the data for data recovery would even exist. As per the argument that none of the prior arts teach the claim limitations of claim 7, the examiner continues to disagree. Crockett teaches a design allowing for data shadowing to provide for data recovery. The design features two hosts (Figure 4, elements 401 and 411, Crockett). The two hosts are updated against one another so that both feature full recovery capabilities (column 2, lines 58-62, Crockett). Plus, means for detection of errors (events) are present and are capable of triggering synchronization between the primary and secondary hosts (column 7, lines 34-44, Crockett). Plus, means are present by which to check and ensure (scan) that the data being copied are correct (column 9, line 52 - column 10, line 9 and column 10, line 54 - column 11, line 37, Crockett). As per the arguments concerning the claim limitations of claim 8, the examiner continues to stand by the previous argument. The claim again only requires one of the seven separate features. Dias teaches how events are filtered to ensure that needless events are not acted on (column 2, lines 28-33, Dias). As per the arguments concerning the claim limitations of claim 9, the examiner continues to stand by the prior arts. The claim again only requires one of four separate features. Crockett's design teaches means for detection of errors (events) are present and are capable of triggering synchronization between the primary and secondary hosts (column 7, lines 34-44, Crockett). However, Crocket does not explicitly teach the storage of network topology information nor does Crocket teach the disregarding of events. In the same field of endeavor, Callon also teaches a network recovery design. In Callon's disclosure, it is taught that network recovery designs use network topology databases and store network topology (column 7, lines 37-39, Callon). As per the arguments concerning claim 10, the applicant contends that claim 10 is equivalent to claim 1 but is in a method form but states that the examiner failed to reject it using all the prior arts. The examiner disagrees, item 26 of the rejection states, "The obviousness motivation applied to claim 1 is applicable towards claims 2-29." Hence all three prior arts are applicable to all 29 claims. As per the argument concerning the recovery operation claim feature, such a feature is taught by Crockett. Crockett teaches a design allowing for data shadowing to provide for data recovery. The design features two hosts (Figure 4, elements 401 and 411, Crockett). The two hosts are updated against one another so that both feature full recovery capabilities (column 2, lines 58-62, Crockett). Plus, means for detection of errors (events) are present and are capable of triggering synchronization between the primary and secondary hosts (column 7, lines 34-44, Crockett). Plus, means are present by which to check and ensure (scan) that the data being copied are correct (column 9, line 52 - column 10, line 9 and column 10, line 54 - column 11, line 37, Crockett). As per the argument that none of the prior arts teach disregarding the notification, such a prior art is taught by Dias. Dias teaches how events are filtered to ensure that needless events are not acted on (column 2, lines 28-33, Dias). As per the argument the claims features of claims 24-27 are not taught, the examiner disagrees. Dias teaches these features within claims 5, 7 and 8 of the prior art. ..